

When an Examiner's restriction requirement relies on reason 1, the requirement must provide an appropriate explanation as to why "each subject for inventive effort, and also a separate field of search."

[e]ven though they are classified together, each subject can be shown to have formed a separate subject for inventive effort when [the] explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search (§808.02)

If the restriction requirement relies on reason 3, the Examiner must provide an appropriate explanation that

it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists [so that] a different field of search is shown, even though the two are classified together. The indicated field of search must in fact be pertinent to the type of subject matter covered by the claims (§808.02).

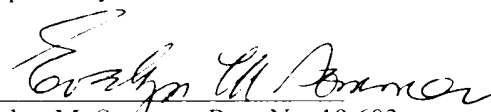
Thus, the Patent Office has taken the position that this distinctness requirement between inventions requires division on the basis of (1) separate classification, (2) separate status in the art, or (3) a different field of search.

It is submitted that the Examiner has not set forth a prima facie case for restriction and particularly not between inventions II and III which are both classified in class 435, subclass 4.

Reconsideration of the restriction requirement and an action on the merits is respectfully requested.

A Petition for one month extension is enclosed.

Respectfully submitted,

By: 

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